

**Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance
Reform, and Housing**

2009 Senate Bill 417

Testimony of Shane W. Falk
Staff Counsel
Government Accountability Board
December 9, 2009

Chairperson Taylor and Committee Members:

Thank you for the opportunity to appear before this committee and testify regarding Senate Bill 417. The Government Accountability Board supports this legislation. On May 5, 2009 and by a unanimous vote, the Government Accountability Board decided to recommend that the Legislature amend §11.23, Wis. Stats., in the fashion provided in this legislation.

On March 10, 2008, John Swaffer, Jr., filed a civil action for declaratory and injunctive relief arising under the First and Fourteenth Amendments to the U.S. Constitution. The action was filed in the United States District Court, Eastern District of Wisconsin, and alleged that Mr. Swaffer's constitutional rights were infringed by §§11.23 and 11.30, Wis. Stats., which involve the organizational, reporting, disclosure and disclaimer requirements imposed on individuals by Wisconsin's election laws.

Mr. Swaffer filed the action in anticipation of an April 1, 2008 town of Whitewater election involving three separate referenda to allow liquor sales and issuance of liquor licenses in Whitewater. Mr. Swaffer opposed allowing liquor sales and licenses as the town had been "dry" since 1977. Mr. Swaffer sought to send post cards to residents of Whitewater in which he opposed the referenda. Mr. Swaffer sought to spend between \$200.00 and \$300.00, with a single contributor providing \$120.00.

Currently, § 11.23 (1), Wis. Stats., requires individuals or groups promoting or opposing a referendum to file a registration statement before making disbursements, receiving contributions, or incurring obligations in excess of \$25.00 in the aggregate in a calendar year. In addition, §11.23(4), Wis. Stats., requires individuals or groups promoting or opposing a referendum to file campaign finance reports as provided in §§11.06, 11.19, and 11.20, Wis. Stats. Once an individual or group meets the §11.23, Wis. Stats., threshold of \$25.00, the individual or group is also subject to reporting requirements of §11.05, Wis. Stats., and the source attribution requirements of §11.30, Wis. Stats.

The Honorable J.P. Stadtmueller, U.S. District Judge, Eastern District of Wisconsin, issued a declaratory ruling on March 16, 2009 declaring §§11.23 and 11.30, Wis. Stats., unconstitutional as applied to Mr. Swaffer. However, Judge Stadtmueller did not rule these statutes facially unconstitutional. Without a legislative change, the State of Wisconsin is likely to be sued over and over as a result of the current statutory

requirements. Pursuant to Federal law, the Plaintiffs in the Swaffer case received \$70,000.00 from Wisconsin as reimbursement for attorney fees. To avoid further and continued similar fee awards, this legislation is needed.

As for the dollar amount of the threshold for registration and reporting requirements, the Committee should be aware that the Government Accountability Board carefully considered the limits of many states before recommending the \$750.00 figure. For instance, in the Midwest the following states have the following threshold amounts for registration and reporting requirements on referenda:

Illinois:	\$3,000.00
Iowa:	\$ 750.00
Michigan:	\$ 500.00
Minnesota:	\$ 750.00

The Government Accountability Board believes that this legislation appropriately balances individuals' First Amendment speech rights with the compelling state interest in an informed electorate. This legislation proposes a reasonable limitation on referenda activities by requiring campaign finance registration and reporting to disclose contributions and disbursements in support of or opposition to referenda. This legislation aids the public in fully understanding the true source of support or the extent of support for referenda so that the public can make informed decisions about referenda votes.

On behalf of the Government Accountability Board, I appreciate your consideration of these issues with regard to this bill and will answer any questions you may have at this time.

Thank you.

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JUDGE MICHAEL BRENNAN
Chair

KEVIN J. KENNEDY
Director and General Counsel

November 18, 2009

The Honorable Lena Taylor, Chair
Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing
Room 415 South, State Capitol
Madison, WI 53702

Dear Senator Taylor:

On behalf of the Government Accountability Board, I request the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing introduce legislation which has been drafted to address specific issues relating to the administration of the state's campaign finance laws. The jacketed legislation accompanies this correspondence.

Currently, §11.23 (1), Wis. Stats., requires individuals or groups promoting or opposing a referendum to file a registration statement before making disbursements, receiving contributions, or incurring obligations in excess of \$25.00 in the aggregate in a calendar year. In addition, §11.23(4), Wis. Stats., requires individuals or groups promoting or opposing a referendum to file campaign finance reports as provided in §§11.06, 11.19, and 11.20, Wis. Stats. Once an individual or group meets the §11.23, Wis. Stats., threshold of \$25.00, the individual or group is also subject to reporting exemption provisions of §11.05, Wis. Stats., and the source attribution requirements of §11.30, Wis. Stats.

The Honorable J.P. Stadtmueller, U.S. District Judge, Eastern District of Wisconsin, issued a declaratory ruling on March 16, 2009 declaring §§11.23 and 11.30, Wis. Stats., unconstitutional as applied to an individual seeking to influence the outcome of a local referendum. However, Judge Stadtmueller did not rule these statutes facially unconstitutional. Without remedial policy action and without a legislative change, the State of Wisconsin is likely to be sued over and over as a result of the current statutory requirements.

The Government Accountability Board has reviewed the court decision and the statutory provisions in a number of other states relating to registration and reporting of referenda activity. The G.A.B. believes the threshold for registration and reporting of referenda campaign finance activity should be raised from \$25 to \$750 to avoid additional litigation. The most recent litigation cost the State \$70,000 in legal fees paid to the plaintiffs.

If you have questions about the legislation, please contact our staff counsel, Shane Falk at 608-266-2094 or me at 608-261-8683. Thank you for your attention to our request.

Sincerely,

A handwritten signature in cursive script, reading "Kevin J. Kennedy".

Kevin J. Kennedy
Director and General Counsel
Government Accountability Board